

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

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Martin J. Wash, Secretary of Labor,  
 United States Department of Labor

Case No. 2:20-cv-00510-KJD-DJA

Plaintiff,

**Order**

v.

Unforgettable Coating, Inc., et al.,

Defendants.

Before the Court is Defendants' emergency motion for a protective order. (ECF No. 97). Plaintiff filed a response. (ECF No. 98). The parties have also filed a stipulation to extend discovery deadlines. (ECF No. 96). Because the Court is unable to decide the issues on the briefing before it, it grants the emergency motion in part. Because the Court finds good cause, it grants the stipulation to extend discovery deadlines. The Court finds these matters properly resolved without a hearing. LR 78-1.

**I. Background.**

After defending what they assert was an oppressive deposition replete with irrelevant and repetitive questions on October 27, 2021, Defendants filed a motion for a protective order before the next day's deposition. (ECF No. 97). Defendants ask that the depositions scheduled for October 28th, November 1st – 5th, and November 17th be vacated and stayed while the parties brief the protective order issue. *See id.* Defendants suggest the below expedited briefing schedule:

Defendants' motion	Friday, November 5, 2021
Plaintiff's response	Wednesday, November 10, 2021
Defendants' reply	Friday, November 12, 2021
The deposition scheduled for October 28, 2021 went forward as scheduled.	

1 Plaintiff responds that Defendants have mischaracterized the depositions that the parties  
2 have completed so far. (ECF No. 98). He asserts that Defendants' have provided no case law to  
3 support cancelling a deposition on the day it is scheduled for "repeated" and "irrelevant"  
4 questioning. *See id.* Plaintiff argues that sanctions are appropriate for Defendants' conduct. *See*  
5 *id.*

## 6 **II. Discussion.**

### 7 **A. The Court grants Defendants' emergency motion in part.**

8 "Discovery is supposed to proceed with minimal involvement of the Court." *FDIC v. 26*  
9 *Flamingo, LLC*, No. 2:11-cv-01936-JCM-NJK, 2013 WL 3975006, at \*8 (D. Nev. Aug. 1, 2013).  
10 Under Local Rule 26-2, discovery motions will not be considered unless the movant has made a  
11 good faith effort to meet and confer before filing the motion and has submitted a declaration  
12 setting out the details and results of the meet and confer. LR 26-2(c). Courts may impose  
13 sanctions—including reasonable expenses and attorneys' fees—for the failure of a party to appear  
14 for a deposition if the failure to appear was not substantially justified or other circumstances make  
15 an award of expenses unjust. *See* Fed. R. Civ. P. 37(d)(1)(A), (d)(3).

16 Here, the parties' positions regarding what occurred at the deposition in question are  
17 vastly divergent. Thus, without a transcript, the Court is unable to determine whether a protective  
18 order is necessary. Unable to rule on the issues as presented, the Court grants Defendants'  
19 motion to vacate and stay the depositions scheduled for November 1st – 5th and 17th and for an  
20 expedited briefing schedule.<sup>1</sup> Defendants must first, however, make another good faith effort to  
21 meet and confer with Plaintiff in an attempt to resolve the issues before filing their motion for a  
22 protective order. Defendants must include a declaration setting out the details and results of that  
23 meet and confer in their motion. After considering the protective order briefings, the Court will  
24 award monetary sanctions—including reasonable costs and attorneys' fees for rescheduling the  
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26 <sup>1</sup> Defendants simultaneously ask for a stay of discovery. (ECF No. 97-1 at 8). The Court  
27 declines to rule on this request because the parties have addressed it in their stipulation to extend  
28 discovery deadlines. (ECF No. 96 at 3). The Court confines its order to Defendants' request to  
vacate and stay depositions only.

1 postponed depositions, filing the instant motions, and briefing these issues—to the prevailing  
2 party.

3 ***B. The Court grants the parties' stipulation to extend.***

4 A motion to extend a date set by the discovery plan, scheduling order, or other order must  
5 be supported by a showing of good cause. LR 26-3. The motion must include: (a) statement  
6 specifying the discovery completed; (b) a specific description of the discovery that remains to be  
7 completed; (c) the reasons why the deadline was not satisfied or the remaining discovery was not  
8 completed within the time limits set by the discovery plan; and (d) a proposed schedule for  
9 completing all remaining discovery. LR 26-3(a)-(d). Here, the Court finds that the parties have  
10 demonstrated good cause to grant their stipulation to extend discovery deadlines. (ECF No. 96).  
11 The parties are admonished that the Court will require them to re-notice and complete depositions  
12 within the new deadlines proposed in their stipulation to extend. (ECF No. 96).

**IT IS THEREFORE ORDERED** that Defendants' motion for a protective order (ECF No. 97) is **granted in part** as it relates to their request to stay the depositions at issue in this motion—excluding the deposition scheduled for October 28, 2021 and Defendants' request to stay discovery—and for an expedited briefing schedule. The following deadlines shall govern the parties' briefs:

Defendants' motion	Friday, November 5, 2021
Plaintiff's response	Wednesday, November 10, 2021
Defendants' reply	Friday, November 12, 2021

**IT IS FURTHER ORDERED** that the parties must meet and confer in an attempt to resolve the issues before Defendants file their motion on **Friday, November 5, 2021**.

**IT IS FURTHER ORDERED** that the party who prevails on the issue of a protective order will be entitled to their reasonable attorneys' fees and costs incurred in rescheduling the postponed depositions, filing the instant motions, and briefing these issues.

**IT IS FURTHER ORDERED** that the stipulation to extend discovery deadlines (ECF No. 96) is **granted**. The following deadlines shall govern discovery:

Discovery cutoff	Monday, January 14, 2022
Dispositive motions	Monday, February 14, 2022
Pretrial order <sup>2</sup>	Wednesday, March 16, 2022

DATED: October 28, 2021

  
 DANIEL J. ALBREGTS  
 UNITED STATES MAGISTRATE JUDGE

<sup>2</sup> If dispositive motions are filed, the deadline for filing the joint pretrial order will be suspended until 30 days after decision on the dispositive motions or further court order. LR 26-1(b)(5).